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Human rights situations that require the Council's attention

Joint written statement* submitted by International Educational Development, Inc., Mouvement contre le racisme et pour l'amitié entre les peuples, non-governmental organizations on the roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[18 February 2014]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Addressing genocide and mass atrocities of the Tamil people in Sri Lanka*

International Educational Development, Inc., Mouvement contre le racisme et pour l'amitié entre les peuples (MRAP), and Association of Humanitarian Lawyers followed with great interest the Peoples' Tribunal on Sri Lanka, held in Bremen from 7 – December 2013. With the attendance of Gianni Tognoni, Secretary-General of the Permanent People's Tribunal (Rome) and co-chaired by Daniel Feierstein (Buenos Aires), President of the International Association of Genocide Scholars and Denis Halliday (Ireland), former Assistant Secretary-General of the United Nations, the Tribunal found that

"genocide against the Eelam Tamil group is a continuing process, one that has not yet accomplished the total destruction of their identity. The genocidal coordinated plan of actions reached a climax on May 2009, but it is clear that the Sri Lanka Government project to erase the Eelam Tamil identity, corroborated by the [evidence submitted], shows that the genocide process is ongoing. The genocidal strategy has changed, the killings are being transformed into other forms of conduct, but the intention to destroy the group and its identity remains and continues, through causing serious bodily or mental harm to members of the Eelam Tamil group."

The Tribunal looked closely at Article 2(c) of the Genocide Convention, and applying principles derived from the findings of the International Tribunal for Rwanda, found that the authorities deliberately inflicted and continue to inflict conditions of life of the Tamil people calculated to destroy it in whole or in part by depriving them of food, water, medicines, and housing during the war and since the hostilities ended. The Tribunal focused on post-war seizures of homes, giving traditional Tamil agricultural land to the military or Sinhala settlers, limiting the rights of Tamil fishermen, and the unacceptably high rate of malnutrition in the Tamil areas.

The Tribunal also heard evidence of the failure of the government's Lessons Learnt and Reconciliation Commission to address genocide and mass atrocities -- even if every single recommendation were to be implemented there would still be grossly inadequate remedies for the serious violations of humanitarian law and the achievement of national reconciliation will move only a baby step forward. However, the authorities are not implementing the LLRC recommendations: rather than moving toward reconciliation, testimony indicated that the Sri Lankan authorities continue to fuel animosity towards the Tamil people as part of the on-going genocide. For example, the authorities encourage "anti-Tamil" tourism to the Tamil areas, turning former LTTE facilities into tourist attractions. Hindu temples are destroyed and replaced with Buddhist ones. Tamil graveyards are being destroyed. Tamil historic sites and towns are being renamed with Sinhala ones. The authorities even continue to take their anti-Tamil campaigning around the world, attacking Tamil groups and other groups perceived as sympathetic to the Tamil people. Members of Sri Lanka's diplomatic corps try to interfere with other countries on their treatment of Tamils and Tamil refugees.[1]

Our organizations have been seriously concerned that the international community as a whole and certain United Nations mandate holders in particular failed adequately to respond to the unfolding genocide and mass atrocities carried out against of Tamils in Sri Lanka, especially towards the end of the 26-year-long armed conflict. We sent over 6 urgent actions to the then Special Advisor to the Secretary-General on the prevention of genocide and mass atrocities to no avail. We submitted numerous written statements to the Council and made numerous oral statements on the on-going genocidal atrocities for many years. We also circulated the urgent concerns and other "red alerts" issued by prominent groups, such as the Elders, again to no avail. Nearly 5 years after the end of the war, and in spite of the work of the Secretary-General's Panel of Experts and his internal review panel chaired by Mr. Petrie, there is no accountability, reconciliation effort or even a modicum of justice for the Tamil people. We are gravely concerned not only by the continuing gross violations of human rights committed by the government authorities in Sri Lanka against the Tamil people and their identity as evinced in report of the Peoples' Tribunal, but also by the brazenness with which they are

[1] Some of these members of Sri Lanka's diplomatic corps are themselves persons who perpetrated or planned the gross violations of humanitarian law, and who hide behind the cloak of diplomatic immunity. We maintain that one reason the Rajapaksa group fights so hard to stay in power is so that none will lose diplomatic immunity. However, we do not think diplomatic immunity applies for persons alleged to have committed genocide and mass atrocities. States that have these persons as ambassadors, high commissioners or consular officials should consider national tribunals to try them as provided for in the Geneva Conventions, or at least withdraw their credentials as *personae non gratae*. .

committed – the authorities behave as if that they can carry out these acts and no entity can stop them. Even worse, the authorities continue publicly to pillory any mandate holder or entity that raises concerns, bringing a new low to UN forums and international comity.[2]

The failure of the international community also seriously damaged the basic tenets of humanitarian law as a whole and in particular the Geneva and Hague Conventions, the right to self-determination, the right to resist oppression and tyranny, the right to be free of genocide and mass atrocities, and other fundamental principles of international law. Restoring universal acceptance of and respect for these principles will take concerted action by all, and especially by those who converted what was clearly an armed conflict into "terrorism and counter-terrorism."[3]

The Council's efforts to address this, through it resolutions 19/2 and 22/1 have been shown to be steps too small to remedy this impunity and have even resulted in an unintended harsh divide between States that shield Sri Lanka from efforts toward accountability and those that insist on accountability. Further, those governments that give unflinching support for the government of Sri Lanka are standing in the way of reconciliation and justice for the Tamil people.

The Council has requested input from its mandate holders, and we consider that nearly every mandate is relevant to the situation in Sri Lanka. We especially note the relevance of the mandate on truth, justice, and reparation and guarantee of non-recurrence, and have submitted a written statement, A/HRC/24/NGO/25, on this point. The mandates on torture, summary execution, violence against women, freedom of expression, freedom of association, freedom of religion, housing, cultural rights, the right to food, the independence of judges and lawyers, internally displaced persons and human rights defenders are also highly relevant and we encourage the mandate holders on these topics to continue to contribute.

It is obvious that continuing the same approach for another year will not further the Council's goal of promoting reconciliation and accountability in Sri Lanka and the Council must now take stronger steps. We maintain that it is no longer tenable for the resolutions to praise the Sri Lankan authorities for steps take when these steps are either far too small or actually are steps backwards. Further some of the activities, such as land mine removal, are undertaken and funded by outside sources. We also think that the Council should express its remorse for failing to undertake actions earlier that could have prevented the catastrophe that has befallen the Tamil people and the damage done to fundamental tenets of international law.[4]

The call of the High Commissioner for an independent and credible investigation is a sound one and should be heeded immediately, especially as the authorities are allowing luxury resorts to be built in the area of the final assaults and evidence will be permanently buried under hotels. We think the process should start with a Commission of Inquiry of the Council. The Council and the international community as a whole must also find ways to prevent any alteration of the Tamil areas or any destruction of evidence until the Commission has completed its work. Those States that voted against resolution 22/1 or abstained must begin to re-evaluate this and look at what they "gain" from denying justice for the Tamil people. Finally, if the Council fails to take responsible and meaningful action, we encourage the High Commissioner to appoint her own team of investigators.

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*Association of Humanitarian Lawyers (AHL) NGO(s) without consultative status, also share the views expressed in this statement.

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[2] We also note that the relations between non-governmental organizations and the Sri Lankan authorities have been seriously poisoned, with NGO delegates, including our own, physically and verbally threatened.

[3] In this regard, we welcome the quick response to the situation in the Central African Republic to prevent genocide and mass atrocities, and can only assume that the post-Tamil genocide soul-searching by all played a major role in this.

[4] The Council should recall the words of Edward Mortimer, Chair of the Sri Lanka Campaign for Peace and Justice: "Sri Lanka must not become another hollow 'never again' but the starting point for a real change in the world's response to genocide and mass atrocities."